

REMARKS

Entry of the foregoing and reconsideration of the subject application are respectfully requested in light of the comments which follow.

Claims 1-10 were pending in this application. In this response, claims 1-2, 4-5 and 7-8 have been amended and claims 11-17 added. Thus, claims 1-17 remain pending.

Support for the foregoing amendments can be found, for example, in at least the following locations in the original disclosure: the original claims and the specification, page 5, line 22, page 6, lines 1-6, page 7, lines 22-25, page 11, lines 18-23 and Table 1.

DISCLOSURE OBJECTIONS

The disclosure was objected to for the reasons appearing at page 5 of the Official Action. Applicants have prepared and include a substitute specification addressing the formatting of the numbers as noted by the Examiner. In addition, the spelling of some words have been changed to the Americanized version. Reconsideration is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 101

Claims 7 and 8 are rejected under 35 U.S.C. §101 for reasons presented at page 2 of the Official Action. Reconsideration and withdrawal of this rejection are respectfully requested in view of the amendments to claims 7 and 8.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1 to 4, 6, 7 and 9 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,426,084 to Fukaya (hereafter "*Fukaya*") on the grounds set forth on page 3 of the Official Action. This rejection is respectfully traversed.

To anticipate a claim, the reference must teach all of the elements of the claim. See MPEP § 2131. Comparing the disclosure in *Fukaya* to the claims of the present application at issue here, the *Fukaya* patent does not disclose an alloy having the composition as claimed in claim 1. For example, Table 1 in *Fukaya* only has one example containing Mo in the claimed amount, i.e., Ex. A3 with 2.71 wt.% Mo. However, Ex. A3 does not have any Nb, which is present in claim 1 in the claimed amount of about 0.8-1.2 wt.% Nb. In light of at least this difference, Applicants respectfully submits that an anticipatory rejection is improper since *Fukaya* does not disclose the invention as claimed. Withdrawal of the rejection is respectfully requested.

Claims 1, 3, 4, 6, 7 and 9 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,286,442 to Uematsu (hereafter "*Uematsu*") on the grounds set forth on page 3 of the Official Action. This rejection is respectfully traversed.

To anticipate a claim, the reference must teach all of the elements of the claim. See MPEP § 2131. Comparing the disclosure in *Uematsu* to the claims of the present application at issue here, the *Uematsu* patent does not disclose that Mo is partly replaced by W, as present in the current claims. In light of at least this difference, Applicant respectfully submits that an anticipatory rejection is improper since *Uematsu* does not disclose the invention as claimed. Withdrawal of the rejection is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103

Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Fukaya* or *Uematsu* on the grounds set forth on page 3 of the Official Action. This rejection is respectfully traversed. Both *Fukaya* and *Uematsu* fail to disclose all of the features of the claims, as outline above. It is respectfully asserted that neither of these references renders the claims obvious for at least the same reasons. Further, the rejection does not present a reasoned statement as to how either reference, by itself and in view of the amendments to claim 1, renders any missing element obvious, as required to be a proper obviousness rejection (*see, KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, (2007)). Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Claims 1-10 are rejected under 35 U.S.C. §103(a) as being unpatentable over European Patent Application No. 0688882 (hereafter "*EP '882*") cited in Applicant's IDS filed December 27, 2006 alone or in view of *Fukaya* on the grounds set forth on page 4 of the Official Action. This rejection is respectfully traversed.

The rejection of Applicants' claims as outlined in paragraphs 13-20 of the Official Action are improper as an obviousness rejection because the proposed combination does not address or meet all of the claim limitations, as required to properly reject the claims. See, e.g., M.P.E.P. §§2143-2143.03 and *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, (2007). For example, the alloy in *EP '882* does not address the currently claimed feature 0.8-2% of Nb and that Mo is partly replaced by W. *EP '882* limits Ti, Nb V and Zr to $(\%C + \%N) \times 4$ and an upper limit of about 0.8 (*see, page 5, lines 32-37*). No composition in Tables 1-3 have Nb in the claimed

amount. Further, there is no W disclosed in *EP* '882 at all. As previously noted, Table 1 in *Fukaya* only has one example containing Mo in the claimed amount, i.e., Ex. A3 with 2.71 wt.% Mo, but that Ex. A3 does not have any Nb, which is present in claim 1 in the claimed amount of about 0.8-1.2 wt.% Nb. *Fukaya* does disclose the addition of Mo or W (see, col. 10, lines 5 et seq). However, *in toto*, the proposed combination does not disclose or render obvious each of the constituents in the claimed composition. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

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